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IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
SEATTLE DIVISION

CHEYANNE DIXSON ROSA

Plaintiff,

vs.

CITY OF ISSAQUAH ET AL  
Defendant.

Case No.: 2:24-cv-01673-TL

PLAINTIFF'S MOTION TO EXCLUDE  
DEFENDANT'S EXPERT WITNESS DR.  
LYNCH

NOTING DATE: JUNE 20, 2025

PLAINTIFFS' MOTION TO EXCLUDE  
DEFENDANT'S PROPOSED EXPERT  
JOHN B. LYNCH -j  
CASE NO.

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## I. INTRODUCTION

Cheyenne Dixon (hereinafter “Plaintiff”) moves to exclude Defendant’s purported expert Dr. Lynch [“Lynch’], pursuant to the Court’s Civil Trial Scheduling Order, ECF #9, because the report is not relevant nor reliable. The issue in this case is whether vaccine alternatives, like masking, testing, and off-property eating while unmasked were safe and effective, or whether it created an undue hardship. Dr. Lynch’s purported expertise is limited to vaccine efficacy which is not an issue because the Plaintiff was exempt from the vaccine requirement due to her sincerely held religious belief(s).

What is more, Dr. Lynch does not utilize a generally accepted method of analysis in his report, and, unlike Plaintiff’s expert, has not undertaken to analyze the risks associated with accommodating Ms. Dixon as an unvaccinated police officer [“PO”]. His report is, therefore, unreliable.

Lynch’s literature review on global vaccination and population(s) effects and statistical models based on who does and does not vaccinate does not relate to whether *this* employer could grant a religious accommodation to *this* Plaintiff to have allowed her to continue working while frequently testing and wearing masks, among other accommodations. Dr. Lynch gives no testimony regarding how, in his expert opinion, it was safe to accommodate Ms. Dixon during the height of the Omicron and Delta waves from October 18, 2021 to February 16, 2022, but not thereafter. This renders his opinion irrelevant. Other opinions of Dr. Lynch are unduly prejudicial and do not make an issue of fact more likely than not. Therefore, this Court should exclude the report and testimony of John B. Lynch, MD, MPH.

## II. FACTUAL BACKGROUND

Governor Inslee’s Proclamation, 21-14 et seq. (“Proclamation”), requiring vaccination of most state employees was mirrored by Mayor Pauley who required vaccination of COI employees. (Dkt #2 Complaint). Plaintiff submitted a request for a religious exemption and accommodation from the City of Issaquah (“COI”) policy. Dkt #2, p. 45, Ex. 3. COI believed Ms. Dixon’s beliefs to be sincerely held and exempt[ed] her from the Mayor’s requirement [of vaccination]. Id., p. 50, Ex. 2 Thereafter COI concluded, confusingly, that it would be an undue hardship to accommodate Ms. Dixon, but that due to timing issues [It] could reasonably accommodate Ms. Dixon until December 15, 2021. Id. ¶5. The City stated, unequivocally, that it could not accommodate beyond the December 15 date. Id. However, thereafter, the COI engaged in negotiations with the Guild (Issaquah Police Officers Association, IPOA), and based upon those negotiations COI determined [It] could continue to safely accommodate Ms. Dixon until February 16, 2022 “to allow her time to vaccinate”. Id. p. 52. Continued employment was predicated on vaccination despite Ms. Dixon having been exempted due to her sincerely held religious beliefs. Id. The City continued to assert undue hardship while claiming that it could accommodate until February 16, 2022 with no reasoning other than negotiations with the Guild and a unilateral command that Ms. Dixon would have to vaccinate. Id.

For twelve weeks, October-February, Ms. Dixon tested twice weekly before each shift. Each test was overseen by Dustin Huberdeau and the result(s) were emailed through appropriate channels determined by COI. Tribbett Decl., Ex. E. Ms. Dixon never tested positive for CV19. Id. p. 3 (one such test as an example).

1 The accommodation lasted for four months, until February 16, 2022, without incident.  
2 Dr. Lynch fails to opine on the reason(s) why, during this period of time from October to  
3 February, the accommodation of masking while performing her job duties, testing bi-weekly  
4 before each shift, and eating her meals off-site in isolation was not a risk. Dkt. #2, p. 50 (see  
5 gen'ly Ex. A.)

6 The exclusive list of facts and data considered by Dr. Lynch in producing his report  
7 includes: COI Administrative Order, Proclamation 21-14, COI Police Officer position  
8 Description, Ms. Dixon's religious accommodation form, HR Department [Ms. Johnson's]  
9 October 1, 2021 letter to Ms. Dixon regarding her request, an additional letter from Ms. Johnson  
10 dated October 15, 2021 outlining safety protocols during her accommodation, email chain dated  
11 October 18, 2021 regarding the accommodation between various key players at COI, email  
12 between Chief Schwan and Scott Behrbaum regarding oversight of the CV19 testing of Ms.  
13 Dixon, email chain dated January 5-6, 2022 between Ms. Dixon, Ms. Johnson, and Chief  
14 Schwan regarding CV19 testing, Notice of Intent to separate employment dated February 2,  
15 2022, Mayor Pauly's letter to Ms. Dixon separating her from employment dated February 14,  
16 2022, Memorandum of Understanding ("MOU") between COI and Issaquah PO Association,  
17 deposition of Ms. Dixon, declarations submitted in case 2:22-cv-01771-RAJ, and Dr. Lynch  
18 physically toured the Issaquah Police Department and Jail, and reviewed photos of the same and  
19 the officers' cars. Decl. Tribbett Ex. A., Expert Report of Dr. Lynch, p. 3-4.

### 20 III. LEGAL STANDARD

21 Under FRE 702, Defendant must show: (a) the expert's scientific, technical, or other  
22 specialized knowledge will assist the trier of fact to understand the evidence or determine a fact

1 in issue; (b) the testimony is based on sufficient facts or data’ (c) the testimony is the product of  
2 reliable principles and methods; and (d) the expert’s opinion reflects a reliable application of the  
3 principles and methods to the facts of the case.” COI bears the burden of establishing Lynch’s  
4 opinions “admissibility over objections of the Plaintiff by a preponderance of the evidence.” *City*  
5 *of Seattle v. Monsanto Co.*, No. C16-107-RAJ-MLP, 2023 U.S. Dist. LEXIS 104516 (W.D.  
6 Wash. June 15, 2023) District courts act as gatekeepers in evaluating expert testimony for  
7 admissibility, and testimony that does not meet the relevant and reliable standards must be  
8 excluded. Testimony is permitted if it is *both* relevant and reliable. *Neal-Lomax v. Las Vegas*  
9 *Metro. Police Dep’t*, 574 F. Supp. 2d 1193, 1201 (D. Nev. 2008); *Kuhmo Tire Co., Ltd. V.*  
10 *Charmichael*, 526 U.S. 137, 147 (1999). To determine admissibility, the court must first  
11 determine if the testimony will be relevant to the particular issues, causes of action, or defenses  
12 to be proven at trial. The court has a job in reviewing this “precondition” to admissibility to look  
13 for a “link” or “connection” to a fact in the case which ultimately helps the trier of fact resolve  
14 disputed facts. *Many Cultures, One Message v. Clements*, 830 F. Supp. 2d 1111, 1138-39 (W.D.  
15 Wash. 2011). As the Ninth Circuit held: “[w]hat is relevant depends on what must be proved....”  
16 *Primiano v. Cook*, 598 F.3d 558, 567 (9<sup>th</sup> Cir. 2010).

17           The second step of the gatekeeping function is to determine reliability. Reliability  
18 requires more than the “....*ipse dixit* of the expert” to pass the reliability test. *Sonneveldt v.*  
19 *Mazda Motor of Am., Inc.*, N0. 23-55325, 2024 U.S. App. LEXIS 32836, at \*5 (9<sup>th</sup> Cir. Dec. 30,  
20 2024) (*quoting Gen. Elec. Co.*, 522 U.S. 136, 146, (1997)). Expert testimony is reliable if it is  
21 “based on sufficient facts or data,” “is the product of reliable principles and methods,” and  
22 “reflects a reliable application of the principles and methods to the facts of the case.” Fed. R.  
23 Evid. 702 (b)(c)(d). Expert testimony is reliable “if the knowledge underlying [the opinion] ‘has

a reliable basis in the knowledge and experience of [the relevant] discipline.” *United States v. Sandoval-Mendoza*, 472 F.3d 645, 654 (9<sup>th</sup> Cir. 2006) (quoting *Kumo Tire*, 526 U.S. at 149).

#### IV. ARGUMENT

##### A. Lynch’s Opinions Are Not Relevant

The first prong under FRE 702 goes to relevance. *Van Loo v. United States*, No. 3:23-cv-05618-DGE, 2025 U.S. Dist. LEXIS 38652, at \*4-6 (W.D. Wash. Mar. 4, 2025). There are four factors the court should consider in determining whether an expert’s opinion will assist the trier of fact: “(i) whether the expert is qualified; (ii) whether the subject matter of the testimony is proper for the jury’s consideration; (iii) whether the testimony conforms to a generally accepted explanatory theory; (iv) whether the probative value of the testimony outweighs its prejudicial effect.” *Scott v. Ross*, 140 F.3d 1275, 1285-86 (9<sup>th</sup> Cir. 1998).

“To determine the helpfulness of an expert’s testimony, courts evaluate whether the testimony makes a fact of consequence more or less probable.” (*Van Loo*, at \*4-6)(quoting *Hemmings v. Tidyman’s Inc.*, 285 F.3d 1174, 1184 (9<sup>th</sup> Cir. 2002)). When the research is too generic and not tailored to the facts of the case it is not helpful. *Many Cultures*, 830 F. Supp., 1141-42, (2011). Lynch’s report and expert testimony do not meet the relevance prong under FRE 702 and must be excluded due to the generic and “off the rack” nature of his report.

##### i. Dr. Lynch is not qualified

Dr. Lynch is not a scientist and to the extent he purports to be an expert his expertise is limited to the efficacy of [CV-19] vaccines. Decl. Tribbett, Ex. A. Report of Dr. Lynch CV. The efficacy of CV19 vaccines [is] not relevant to the inquiry; nor do such facts make

1 accommodation more or less probable. *Many Cultures, One Message*, at 1138-39, *Van Loo*, at  
2 \*4-6). Lynch has previously admitted he had “not performed epidemiological analysis, you  
3 know, independent experiments.” Decl. Tribbett, Ex. D., Dep. Dr. Lynch, *Fisher v. DFI*, p. 24:5-  
4 6. Lynch gained his knowledge from reading medical journals of true experts who performed  
5 research. The reading of other expert’s reports is something any doctor could do.

6 Dr. Lynch is not a legal or human resource expert and cannot give an expert opinion  
7 relating to topics on such matters. Tribbett Decl. Ex. B Lynch Dep. 7:5-18. Lynch has never  
8 participated in the development, analysis, or author[ship] of a peer reviewed article relating to  
9 testing [for CV19]. *Id.*, 14:3-8, see also CV. Comments and opinions relating to masks and tests  
10 are observations and recitations relating to what Lynch has read.

11 Lynch admitted he was not an expert with respect to masking and testing. Ex. D, Lynch  
12 Dep. 19:2-22, 22:15-24:8. When asked during [that] deposition if he had conducted any research  
13 regarding the efficacy of masks, regarding CV19 testing, and specifically antigen tests, or even  
14 regarding the vaccine(s) itself, Lynch gave an evasive boilerplate answer: “I would have to go  
15 back and look at my list of publications” (with respect to research regarding masks) *Id.* at 22:15-  
16 24. A review of the CV provided by Lynch shows that he has no original research on the same  
17 topics. He admitted he lacked the ability to analyze factors involved with assessing the risk  
18 reduction associated with the use of masks. *Id.* 23:21-25.

19 U of W and Harborview, Lynch’s employer, developed a PCR test which Lynch played no  
20 role in. Ex. B. 13:23-14:14:8. Lynch was unaware what type of test was utilized by COI in  
21 testing Ms. Dixon. *Id.* 23:6-15. Lynch identified himself as a non-expert when it came to



1 analyzing the tests used by the COI for jail inmates which were the same tests utilized by COI  
2 for Ms. Dixon. Id. 27:14-28:1

3       Lynch does have expertise as it relates to vaccines, but vaccines and vaccine efficacy  
4 [are] not the relevant inquiry in this case. (see Id. 70:22-72:5). Lynch has conducted no original  
5 research. Decl. Tribbett Ex. C. Dep. Dr. Lynch, Carlson v. City of Redmond 54:11-17. The one  
6 published article attributable to Lynch maintain[ed] that masking and testing in EMS  
7 professionals effectively prevented both the acquisition and onward transmission of CV19. Decl.  
8 Tribbett Ex. E, p. 4, Lynch Article. A turn-about from his report submitted in this case. However,  
9 he was only a co-author, and his CV cites to no study or report that contradict[ed] the assertion  
10 that masking and testing are effective. His expert report contradicts his own prior findings. Ex. B  
11 101:14-106:7.

12       **ii. Lynch's testimony does not assist the trier of fact**

13       Lynch's testimony also fails the second factor. Plaintiff has alleged claims under WLAD  
14 relating to the hardship of accommodating with social distancing, masking, eating/de-masking  
15 off COI property, and testing. Lynch's report is conclusory, vague, and a general endorsement for  
16 vaccination and vaccine mandates.

17       The issue in this case is whether vaccine alternatives utilized by COI were safe and  
18 effective both during the time Ms. Dixon was accommodated (from October 2021-February  
19 2022) and [demonstrably] thereafter. The report, ¶¶14-32, discusses the FDA development and  
20 approval of vaccines which are not contested by the Plaintiff and not at issue here. Thereafter,  
21 ¶¶33-54, discusses why vaccines are so important. Ms. Dixon is not contesting the importance  
22 of vaccines and this information would not assist the trier of fact in determining if masking,

1 testing, and social distancing are reasonable risks in accommodation. The introduction of these  
 2 facts is more likely to prejudice the trier of fact by implying that Ms. Dixon contests vaccines  
 3 and FDA approval and/or importance or efficacy. (FRE 403) This is simply not true and the  
 4 inclusion is prejudicial.

5 Plaintiff does not contest that the vaccines were developed and tested to prevent serious  
 6 illness and death; nor does she challenge the COI's right to implement a vaccine mandate.  
 7 Rather, Ms. Dixon states that the COI could have continued to accommodate her without undue  
 8 hardship or burden. Lynch's report fails to speak to the key issue: how could masking and testing  
 9 be safe and effective from October to February and then unsafe or ineffective starting February  
 10 16, 2022? The trier of fact ultimately must make the determination and Lynch's report does not  
 11 assist in this inquiry. In fact, Lynch admitted that he did not know anything about the testing of  
 12 Ms. Dixon. Ex. B, 87:8-20, 88:3-10, 116:2-5. Lynch cannot opine on what the risk of a "false  
 13 negative or positive" test would be because he did not know anything about the test used, the  
 14 cadence of testing, or other aspects of the process Id. and Ex. A ¶¶ 94, 44, 46, 47. COI did not  
 15 provide Lynch with any of the bi-weekly test results to assist in his report formulation. Id. 84:3-  
 16 9, see e.g. Ex. E, p.3. The only opinion Lynch could give regarding Ms. Dixon in an expert  
 17 capacity was that, "she should have gotten vaccinated." Id. 88:20-24 In fact, Lynch disagreed  
 18 with the entirety of COI's decision to accommodate Ms. Dixon and will likely confuse the trier  
 19 of fact not assist [them]. Id. 88:14-24, 91:21-92:6. Lynch also could not opine on why COI  
 20 accommodated Ms. Dixon to allow her more time to become vaccinated when she was already  
 21 exempt. Id. 40:14-41:7.

22 Because Lynch was not provided with any of the information relating to the bi-weekly  
 23 testing of Ms. Dixon the report has no original analysis or information relating to Ms. Dixon's  
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1 risk of transmission while tested and masked. Ex. B 84:3-9, Ex. A ¶¶84-95. Dr. Lynch’s report,  
 2 lacking basic information relating to the accommodations utilized, cannot be of assistance to the  
 3 trier of fact. Statements such as those made in ¶41 relate to public health strategy which is not  
 4 the inquiry in a WLAD accommodation case. Ex. A ¶41. The paragraphs wherein Lynch  
 5 discusses antigen tests are merely a recitation of research papers by other experts, and Lynch  
 6 does not relate the methodology back to the facts of this case. Id. ¶¶45-48. Further, Lynch did not  
 7 believe that masking was reasonable because COI never provided [him] with a “fit test” from  
 8 Ms. Dixon while using an N95 which is required by OSHA. Ex. B 35:6-22. Nor is he an expert  
 9 in masks. The lack of specific knowledge regarding Ms. Dixon’s accommodations are fatal to  
 10 the relevance inquiry.

11 Lynch’s testimony and report do not make any facts of consequence in this case more or  
 12 less probably. (*Van Loo*). The Supreme Court requires Defendant to bear some risk as long as it  
 13 does not rise to an excessive or “unjustifiable” level. *Groff v. DeJoy*, 143 S. Ct. 2279, 2294 (U.S.  
 14 2023). The report and testimony do not state what residual risk remains with masking and testing  
 15 in place because Lynch is not an expert capable of opining on such facts. Lynch believes that  
 16 masking is a reasonable combined mitigation approach in a temporary fashion but fails to  
 17 determine how long it would be reasonable for. Id. 36:6-19. Lynch knows that it is impossible to  
 18 reduce all risk, but failed to opine on the risk Ms. Dixon posed in this case. Lynch has admitted  
 19 that vaccination was not a “silver bullet” (see Ex. C, Lynch Dep., *Carlson v. City of Redmond*, p.  
 20 40:11-47:17).

21 **iii. Lynch’s report does not conform to any generally accepted explanatory**  
 22 **theory**

23 (see argument *infra* re reliability)  
 24  
 25

1           **iv.       Lynch’s report lacks probative value as it relates to the WLAD inquiry**

2           The report itself will result in “confusion of the issues” under FRE 403. It contains many  
 3 paragraphs discussing the origins, progression, and supposed benefits of COVID vaccination,  
 4 which have nothing to do with the issues involved in this case, does not help a trier of fact, and  
 5 therefore, is not relevant. Ex. A, Lynch Rep. at ¶7-61. The main issues to be decided at trial are  
 6 whether masking and testing were reasonable accommodations for the Plaintiff, in her specific  
 7 actual daily job duties, what an acceptable residual risk after masking and testing would or would  
 8 not be under *Groff*, or if masking and testing would pose an undue hardship on the COI’s  
 9 business. The statements relating to the above are inflammatory rather than probative as the  
 10 pandemic is a sensitive topic through which everyone suffered, but that is not an issue before this  
 11 court. (*See United States v. Hankey*, 203 F.3d 1160, 1172 (9th Cir. 2000). Evidence is unfairly  
 12 prejudicial when it has an “undue tendency to suggest decision on an improper basis, commonly,  
 13 though not necessarily, an emotional one.” *Id.* (quoting Adv. Comm. Notes  
 14 to **Fed. R. Evid. 403**).

15           Even if the Dr. Lynch’s testimony and report go to establish safety risks for unvaccinated  
 16 individuals, that still does not help a trier of fact decide if masking and testing were reasonable  
 17 accommodations for this Plaintiff, given Plaintiff’s particular circumstances. Opinions like  
 18 “People should get vaccinated regardless of whether they were infected with COVID-19 for  
 19 several reasons” have nothing to do with the issues in this case. Ex. A ¶ 31. Lynch could not  
 20 opine on what the residual risk of acquisition and transmission a vaccinated and masked person  
 21 posed compared to a masked unvaccinated person because there were too many variables. *Id.*  
 22 59:2-60:1

1 The section addressing vaccine requirements and post-vaccine variants tend to mislead a  
 2 trier of fact into thinking that Ms. Dixon is contesting the Orders, she is not. She is merely  
 3 requesting, as allowed by the Orders, an examination of her right to a reasonable accommodation  
 4 thereto. None of the information contained in ¶¶58-69 discuss how masking and/or testing affect  
 5 the transmissibility and acquisition of the CV19 variants, whether positively or negatively.

6 The inquiry is not about equivalents and these opinions do not make a fact of  
 7 consequence more or less probable. (*see Hemmings.*, 285 F.3d, 1184 (9th Cir. 2002)). Whether  
 8 masking and testing was an effective method to reduce the risk of a single employee to a  
 9 reasonable level is the singular issue this expert is qualified to opine on and he fails to hit the  
 10 mark.

#### 11 **B. Lynch’s Methods and Findings Are Not Reliable**

12 An expert’s opinion must also be reliable. The Supreme Court has outlined several factors  
 13 to help a court determine whether the expert’s methods are reliable:

- 14 (1) Whether a scientific theory or technique can be (and has been) tested; (2) whether the  
 15 theory or technique has been subjected to peer review and publication; (3) known or  
 16 potential rate of error and the existence and maintenance of standards controlling the  
 17 techniques operation; and (4) whether the technique is generally accepted.  
 18 *Neal Lomax*, 574 F.Supp. 2d at 1202 (citing *Daubert I*, 509 U.S. 593-94).  
 19

20 These factors are neither a “test” nor a “checklist” (see *Id.* at 593). An expert’s opinion  
 21 may be excluded if it “...employed no discernable methodology...” and instead the expert  
 22 simply “...relied upon his experience and read the materials and offered his opinion.” *Liv v. Ne.*  
 23 *Univ.*, No. 2:22-cv-004444-LK, at \*69 (W.D. Wash. May 30, 2023)(quoting *Qhine v. Buttigieg*,  
 24 No. 2:20-cv-01761-RAJ, at \*3 (W.D. Wash Sept. 15, 2022). This is exactly what Lynch has done.  
 25 The courts may also exclude experts when their reports “fail to articulate a verifiable

1 methodological approach.” *Li* , at 75-76 (2023). Courts must assess whether the expert’s report  
2 and testimony are based on reliable information and the reasoning or methods employed to  
3 formulate an opinion make sense considering the facts and the methods or reasoning are applied  
4 to the case. (*see Youngevity Int’l v. Smith*, No. 16-cv-704-BTM at. \*12 (S.D. Cal. July 5, 2019)  
5 (*quoting Kuhmo Tire*, 526 U.S. at 158) (see also *Hangerter v. Provident Life & Accident Ins. Co.*,  
6 383 F.3d 998, 1017 (9<sup>th</sup> Cir. 2004)).

7 Here, Lynch presents no facts and data other than recitations of state, national, and global  
8 agenc[ies], fails to use reliable principals and methods of analyzing the risk of accommodating  
9 Ms. Dixon, and has not reflected a reliable application of principles and methods he cites to the  
10 facts of this case. FRE 702 (b)(c)(d). Lynch reviews a study that reviewed studies regarding  
11 Antigen tests (Ex. A ¶45), but admitted he did not know what tests COI utilized, the frequency of  
12 the use, the rate of positive tests of Ms. Dixon or any other facts that would make his  
13 assessment reliable. Ex. B, 87:8-20, 88:3-10, 116:2-15. He cites to data regarding PCR tests not  
14 knowing whether COI used PCR tests. Ex. A ¶47, Ex. B 84:3-9. The report echoes back Lynch’s  
15 own opinion which is not a theory, technique, or methodology applied to this set of facts and this  
16 Plaintiff. There are no methods used to analyze the risk of this Plaintiff with her  
17 accommodations in place which is the *sin qua non* of the inquiry. In fact, Lynch has no data  
18 regarding the COI employees and positive CV19 tests in his report nor could he recall being  
19 given any despite the City tracking positive tests amongst employees. *Id.*, Lynch Dep. 98:6-15,  
20 99:8-13. Although Lynch generally cites to public health data there are no communications to  
21 Ms. Dixon indicat[ing] COI was relying on health data. Dkt #2, p. 50-64.  
22 Lynch applies no method or analysis regarding the change from October 2021 to February 2022.  
23 Lynch’s own report states that the data available from August 2021 through February 2022 show

1 that “an unvaccinated person posed a materially higher risk of transmitting CV-19.” Id. ¶88 The  
 2 report does not resolve how COI accommodated, presumably safely, Ms. Dixon during this  
 3 time, but could not following the preset February 16, 2022 date.

4 Nor does the report utilize any scientific theory or technique to resolve the burning  
 5 question: what was the actual risk Ms. Dixon posed? Plaintiff’s expert answers this exact  
 6 question. Lynch fails to articulate any kind of approach to this question. (see *Li* at 75-76, W.D.  
 7 Wash. 2023). Lynch does not show that COI followed recommendations from the CDC and  
 8 Washington DOH. Ex. A ¶91 Further, COI only selectively followed such recommendations, and  
 9 refused to require booster shots which Lynch opined should have been ordered to treat  
 10 circulating variants (Delta and Omicron). Id. 15:18-23, 75:1-15, 75:21-76:1, 79:9-19, 79:20-25,  
 11 80:8-14, Ex. C, 49:3-50:6.

12 The report should also be excluded, and Dr. Lynch prevented from testifying based on his  
 13 overreach in assessing the Plaintiffs’ actual day to day activities and work environments because  
 14 he is not a general witness with personal knowledge of her job duties and actual responsibilities,  
 15 or an expert on HR decisions like accommodations, or the Plaintiff’s work duties. Ex. A at ¶84-  
 16 87. Dr. Lynch has performed no risk modeling for transmission of CV19 while masked. Ex. D  
 17 Fisher Lynch Dep. 49:14-24, 19:2-20:8, 21:23-22:7, 23:1-25

18 The same flaws present in the Blanck report in *Li. V. Ne. Univ* are present in Lynch’s  
 19 report (“Thirty-two pages and 110 footnotes do not overcome Dr. Blanck’s fatal omission of an  
 20 indispensable component to any reliable opinion: an explanation of his methodology and how he  
 21 applied it to reach his conclusions.”) Dr. Lynch’s 51 page report, 70 pages of exhibits and 127  
 22 footnotes suffer the same flaws. Nowhere in the report, due to lack of information provided to  
 23 Lynch, is the specific testing and masking program applied to Ms. Dixon analyzed for risk.

1 Given that each bi-weekly test was kept and tracked by COI it would be crucial to [his] opinion  
 2 regarding the risk of Ms. Dixon to know the outcome of those tests whether positive or negative  
 3 and relate it to the overall premise he opines upon in his report. An opinion is not reliable if it is  
 4 not based on the facts of a case.

5 The final section of the report titled “Vaccine Hesitancy and Misinformation” is likely to  
 6 be more prejudicial than beneficial to the inquiry. (FRE 403) The relative risk of a vaccinated  
 7 and unvaccinated person discussed by Lynch assumes no other mitigating layers of safety such as  
 8 masking and testing. Id. ¶74.

#### 9 IV. CONCLUSION

10 In closing, Dr. Lynch’s [testimony] does not make a fact of consequence more or less  
 11 probable.” (*Van Loo* No. 3:23-cv-05618-DGE, 2025 U.S. Dist. LEXIS 38652, (2025) (*quoting*  
 12 *Hemmings*, 285 F.3d, 1184 (9th Cir. 2002)), and [his] testimony is not reliable because it is not  
 13 “based on sufficient facts or data,” nor is it “the product of reliable principles and methods,” and  
 14 “reflects [no] reliable application of the principles and methods to the facts of [Ms. Dixon’s]  
 15 case.” (Fed. R. Evid. 702 (b),(c),(d))

16  
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 19 DATED: May 23, 2025

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 22 \_\_\_\_\_ s/ Tracy Tribbett



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ATTORNEY FOR PLAINTIFF

I certify that this memorandum contains 4197 words, in compliance with the Local Civil Rules.

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5  
6 I certify that this motion was served on opposing Counsel of record via the Court's CM/ECF  
7 filing system.  
8

9 May 23, 2025

10 /s/ Tracy Tribbett

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